

### **STATUS OF THE CLAIMS**

Claims 1-29 were originally filed in this patent application. In the pending office action claims 1, 6, 11, 12, 13, 14, 15, 18 and 24 were rejected under 35 U.S.C. §101 as claiming the same invention as co-pending application 09/892424. Claims 18, 20-23, 24 and 26-29 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. No claim was allowed. Claims 18 and 24 have been amended herein and claims 19, 20, 25 and 26 have been cancelled. Claims 1-18, 21-24 and 27-29 are currently pending.

### **REMARKS**

#### **Rejection of claims 1, 6, 11, 12, 13, 14, 15, 18 and 24 under 35 U.S.C. §101**

The Examiner rejected claims 1, 6, 11, 12, 13, 14, 15, 18 and 24 under 35 U.S.C. §101 as claiming the same invention as co-pending Application No. 09/892424. This rejection is in error because Application No. 09/892424 issued as U.S. Patent No. 7,185,093 on 02/27/2007. Applicants traverse the Examiner's characterization of the terms "performance data" and "execution data". The term "execution data" includes "anything that can be measured as the computer system runs or after it runs". Performance data is one example of execution data (see specification, pages 5, and 6). Thus the term "execution data" is a broader term than "performance data." Applicants have filed a terminal disclaimer herewith. Applicants believe the claims are now in condition for allowance and respectfully request reconsideration.

Rejection of claims 18, 20-23, 24 and 26-29 under 35 U.S.C. §101

The Examiner rejected claims 18, 20-23, 24 and 26-29 under 35 U.S.C. §101 as being directed to non-statutory subject matter. In response, claims 18 and 24 have been amended and claims 19, 20, 25 and 26 have been cancelled. Reconsideration is respectfully requested.

Conclusion

In summary, none of the cited prior art, either alone or in combination, teach, support, or suggest the unique combination of features in applicants' claims presently on file. Therefore, applicants respectfully assert that all of applicants' claims are allowable. Such allowance at an early date is respectfully requested. The Examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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